

OVERVIEW ON ORIGIN OF GOODS

www.roedl.de/vietnam | www.roedl.com/vietnam



CLIENT ALERT VIETNAM	Issue: November 2019
MANAGING CHANGE	

Read in this issue:

→ Overview on Origin of Goods

- Rules of Origin of Goods (RoO)
- Certificate of Origin of Goods (C/O)
- Measures of certification

→ Overview on Origin of Goods

Origin of goods is a topical matter these days in Vietnam. The Vietnam Government is currently providing new regulations and launching a number of measures to prevent fraud with regard to the origin of goods. Pursuant to the applicable regulations, "Origin of Goods" signifies the country, group of countries or territory where such goods have been wholly produced or, in case of goods for which a number of countries, groups of countries or territories participated in the production process, it signifies the place where the last basic processing stage of the goods has been completed. In this respect, the rules of origin are committed/agreed under respective international treaties and particularly guided under national legislations to determine the origin of goods thereof.

RULES OF ORIGIN OF GOODS (ROO)

As for the attribution of one country of origin to each product, RoO are set forth as the set of necessary criteria to ensure the unambiguous determination of the national origin of goods. Their importance is based on the fact that in several cases, the applicable duties and restrictions depend upon the source of imports. The RoO shall be in accordance with the agreements in respective international treaties to which Vietnam is a signatory, and to the implementation provisions under national legislations.

There are two types of RoO, including Preferential and Non-preferential RoO. Preferential RoO provide rules of origin (i) applicable to goods being subject to the commitment or agreement on preferential tariff or non-tariff treatments under international treaties to which Vietnam is a signatory, and to the particular guidance by the Ministry of Industry and Trade (MoIT) or (ii) applicable under general tariff preferences and other unilateral preferences in compliance with the rules of origin of importing countries and with the particular guidance by the MoIT. Non-preferential RoO are used to distinguish foreign products from domestic products for the purpose of applying several other trade policy instruments, such as anti-dumping and countervailing duties, safeguard measures, origin marking requirements, discriminatory quantitative restrictions or tariff quotas, and/or rules on government procurements and trade statistics. Accordingly, under a number

of international treaties such as CPTPP and FTAs, the respective RoO have been stipulated therein and have been particularly guided by the MoIT in the implementation legislations.

Despite the variety of international treaties and the different corresponding legislations of Vietnam promulgated to implement such international treaties, the criteria to determine the origin of goods prescribed thereunder are very similar. Especially, it is noteworthy that each of such legislations has provided that minimal operations and processes, being performed separately or in combination with each other, are deemed to be minor and shall not be taken into account upon determining whether a good has been wholly obtained in a country, group of countries or territory, generally encompassing: the preservation of goods in good condition for the purposes of transport or storage; facilitating shipment or transportation; packaging (excluding "packaging" in the electronics industry); displaying goods for sale; simple labelling...

The regulations on De Minimis are also provided under the respective international treaties where such De Minimis are guided differently under each agreement.

CERTIFICATE OF ORIGIN OF GOODS (C/O)

C/O is an important document in export and import transactions. It is a written document or any other evidence with equivalent legal validity, clearly specifying the origin of such goods, issued by the agency or organization of the country, group of countries or territory which exported such goods, and issued on the basis of criteria and requirements complying with the respective RoO.

The regulations on the certification of origin and the verification of origin have been specified in detail under the respective legislations implementing the international treaties thereof.

MEASURES OF CERTIFICATION

- Certificate of origin of goods in document form or in other forms of equivalent legal validity issued by a competent agency or organization to a business entity;

- Source documents for self-certification of origin issued by a business entity based on the written approval of MoIT.

together with Circular 05/2018/TT-BCT dated 03 April, 2018.

1. GENERAL LAW OF VIETNAM

On 8 March 2018, the Vietnam Government promulgated the Decree 31/2019/ND-CP (Decree 31) to provide detailed guidance on the Law on Foreign Trade Management on Origin of Goods applicable to exports/imports where the RoO have been provided in detail as summarized below:

1.1 PREFERENTIAL ROO

- a. Preferential RoO under international treaties: The determination of origin of exports or imports for their entitlement to preferential treatment or non-tariff treatment shall be made in accordance with international treaties to which Vietnam is a signatory, and is subject to guidance by the MoIT.
- b. Preferential RoO pursuant to common tariff preferences and other unilateral preferences: The determination of the origin of exported goods for their entitlement to the common tariff preferences and other unilateral preferences shall be made in accordance with the RoO of the importing country granting such preferences, and subject to guidance by the MoIT.

1.2 NON-PREFERENTIAL ROO

- a. Originating goods: Goods are considered as originating goods if:
 - Such goods are wholly produced or obtained in a country, group of country, or territory as provided under Article 7 of Decree 31;
 - Such goods are not wholly produced or obtained in a country, group of countries or territory, but the goods do satisfy the requirements under Article 8 of Decree 31.
- b. Wholly obtained or produced goods: The exported or imported goods shall be treated as wholly produced or obtained in a country, group of countries, or territory if they are covered by the cases prescribed under Article 7 of Decree 31:
- c. Goods not wholly obtained or produced: The goods not wholly produced or obtained in a country, group of countries or territory shall be treated as wholly obtained or produced in a country, group of countries, or territory if they do satisfy the criteria prescribed in the Appendix I of Product Specific Rules issued

1.3 MINIMAL OPERATIONS AND PROCESSES:

The minimal operations and processes prescribed under Article 9 of the Decree 31, either being performed separately or in combination with each other, are deemed to be minor and shall not be taken into account upon determining whether a good has been wholly obtained in a country, group of country or territory, including: preservation of goods during transportation and storage; dust-cleaning, screening, selecting, classifying, washing, painting or cutting into pieces; packaging; labelling; simply mixing of goods; simply assembling part of products into finished products; combination of these mentioned works; slaughtering animals.

2. COMPREHENSIVE AND PROGRESSIVE AGREEMENT FOR TRANS-PACIFIC PARTNERSHIP (CPTPP)

Under the CPTPP, which incorporated the provisions under the Trans-Pacific Partnership Agreement (Agreement), the RoO have been set out to define the goods' origin, as follows:

2.1 ORIGINATING GOODS:

It is noted that under CPTPP, the goods are treated as originating goods if:

- a. Such goods are wholly obtained or produced entirely in the territory of one or more Parties in accordance with (2.2) below;
- b. Such goods are produced entirely in the territory of one or more Parties, exclusively from originating materials; or
- c. Such goods are produced entirely in the territory of one or more of the Parties using non-originating materials, provided the goods do satisfy all applicable requirements of Annex 3-D (Product-Specific Rules of Origin);

and all the goods do satisfy all other applicable requirements under Chapter 3 of the Agreement.

2.2 WHOLLY OBTAINED OR PRODUCED GOODS:

Under CPTPP, the Parties thereto have agreed to provide that for the purpose of originating goods as mentioned under (2.1) above, goods shall be considered wholly obtained or produced entirely in the territory of one or more Parties if they are covered by the cases as prescribed under Article 3.3 of the Agreement.

2.3 REGIONAL VALUE CONTENT

Each Party to the CPTPP has agreed to provide for a regional value content requirement as specified in Chapter 3 of the Agreement, including related Annexes, to determine whether a good is originating and shall thus be calculated based on the specifications as provided in detail under the Agreement.

Vietnam, as a Party to the CPTPP, has provided its particular regulations in relation to the abovementioned RoO, as well as the corresponding procedures for the certification of origin and the origin verification under Circular 03/2019/TT-BCT dated 22 January, to be applied by agencies, organizations, individuals upon determining the origin of goods being exported and imported under CPTPP. In addition, Circular 62/2019/TT-BCT dated 5 Sept. 2019, amends and supplements Circular 38/2018/TT-BCT as to the determination of origin of imports/exports with regard to the applicability of special preferential tariff treatment under the framework of CPTPP.

3. FRAMEWORK AGREEMENT ON COMPREHENSIVE ECONOMIC CO-OPERATION BETWEEN THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS AND THE PEOPLE'S REPUBLIC OF CHINA (ACFTA)

As agreed under ACFTA where it is a Party thereto, Vietnam has provided particular provisions in relation to RoO under Circular 12/2019/TT-BCT dated 30 July, 2019 (Circular 12):

3.1 ORIGINATING GOODS

Under ACFTA and as specified by Circular 12, goods shall be treated as originating goods and thus be eligible for preferential tariff treatment if they comply with the following rules of origin as well as with all other applicable requirements provided under Circular 12:

- a. They are wholly produced or obtained in a Party in accordance with 3.2 below;
- b. They are produced in a Party exclusively from originating materials from one or more of the Parties;
- c. They are produced from non-originating materials in a Party, provided that the goods do satisfy the requirements as specified under 3.3 below.

3.2 WHOLLY OBTAINED OR PRODUCED GOODS

In accordance with 3.1 above, goods which are treated to be wholly obtained or produced are the goods covered by the cases prescribed under Article 6 of Circular 12.

3.3 GOODS NOT WHOLLY OBTAINED OR PRODUCED

- a. The goods stated under 3.1 above, except for the goods stated under 3.3 below, are treated as originating goods if:
- b. The goods have a Regional Value Content (RVC) not less than 40 per cent of FOB calculated using the formula described under Article 8 of Circular 12, and the final process of production is being performed within a Party; or
- c. the goods classified under Chapters 25, 26, 28, 29, 31 and 39, 42 through 49, 57 through 59, 61, 62, 64, 66 through 71, 73 through 83, 86, 88, 91 through 97 of the Harmonized System, and HS codes which used non-originating materials and have undergone a change in tariff classification (CTC) at the four-digit level, except for headings 29.01, 29.02, 31.05, 39.01, 39.02, 39.03, 39.07, 39.08 shall be subject to the applied criterion as RVC 40 per cent.

3.4 REGIONAL VALUE CONTENT

The formula for the calculation of Regional Value Content is as provided under Article 8 of Circular 12.

4 ASIAN TRADE IN GOODS AGREEMENT (ATIGA)

Under ATIGA, originating goods are defined as the goods that qualify as originating in a Member State in accordance with the provisions under its Chapter 3. Vietnam has provided particular guidance for the implementation of the RoO in ATIGA under the MoIT's Circular 22/2016/TT-BTC dated 3 October, 2016 (Circular 22), as amended by Circular 10/2019/TT-BCT dated 22 July, 2019, as summarized below:

4.1 ORIGIN CRITERIA

The goods imported into the territory of a Member State from another Member State shall be treated as originating goods and be eligible for tariff incentives if such goods comply with any one of the following conditions:

- a. wholly obtained or produced in the exporting Member State as set out and defined in Article 3 Appendix I of Circular 22;
- b. not wholly obtained or produced in the exporting Member State, provided that such goods are eligible under Article 4 or Article 6 of Appendix I of Circular 22.

4.2 GOODS WHOLLY OBTAINED OR PRODUCED AND GOODS NOT WHOLLY OBTAINED OR PRODUCED

Similar to the RoO under other agreements, Circular 22 also provides the criteria to define the goods which are wholly obtained or produced and the goods which are not wholly obtained or produced, as well as the respective formula for the calculation of the Regional Value Content.

5 GENERALIZED SYSTEM OF PREFERENCES (GSP)

The GSP is the system of tariff preferences, which is favored by developed countries for developing countries and least developed countries (beneficiary countries), for tax exemption or reduction. Goods exported from beneficiary countries must fully meet the requirements of preferential RoO in accordance with the regulations of the respective developed/benefactor countries, including:

- a. Handbook on the Scheme of European Union.
- b. Handbook on the Scheme of Norway.
- c. Handbook on the Scheme of Switzerland.
- d. Handbook on the Scheme of Japan
- e. Handbook on the Scheme of Canada.
- f. Handbook on the Scheme of New Zealand.
- g. Handbook on the Scheme of Australia.
- h. Handbook on the Scheme of the US.
- i. Handbook on the Scheme of Turkey.
- j. Handbook on the Scheme of Russia-Belarus-Kazakhstan.

It is highlighted that on 16 April 2018, the competent authority of the Vietnam Government has issued the Official Letter No. 464/XNK-XXHH on the implementation of REX under GSP applicable to goods exported to the EU. It is provided that, based on the Commission Implementing Regulation 2015/2447 dated 24 Nov. 2015 of the EC, as of 1 January 2019 Vietnam has

officially joined the Registered Exporter System (REX). As such, in order to enjoy tariff preferences under GSP – C/O form A, for consignments valued under EUR 6,000, the exporters themselves shall issue the certificate of origin, subject to approval by the competent authority, instead of a REX registration.

6 ROO IN OTHER FREE TRADE AGREEMENTS (FTA)

There are a number of FTAs concluded where Vietnam is a signatory thereto. Under such FTAs, the regulations on RoO have been agreed and particularly guided by the MoIT for the respective implementation of such FTA, including amongst others:

- a. RoO pursuant to the FTA between Vietnam and the Eurasian Economic Union, as particularly provided under Circular 21/2016/TT-BCT dated 20/09/2016;
- b. RoO pursuant to the Asian-India FTA, as particularly provided under Circular 15/2010/TT-BCT dated 15/04/2010;
- c. RoO pursuant to the Asean-Japan Comprehensive Economic Partnership Agreement, as particularly provided under Decision 44/2008/QĐ-BCT dated 08/12/2008.

7 ORIGIN OF GOODS FOR DOMESTIC CONSUMPTION

While the regulations in terms of origin of goods have been provided under a number of international treaties and guided under national legislations as well as in terms of imports/exports, there is currently no specific regulation governing the origin of goods assembled from imported sources for consumption in the domestic market. The Vietnam Government is in preparation to promulgate relevant regulations on this matter.

Rödl & Partner Vietnam accompanies and provides assistance to clients of all kinds in their business activities in Vietnam.

CONTACT FOR MORE INFORMATION



Stefan Ewers, LL.M. (Melbourne)
Partner
Attorney at Law (Germany)
Registered Foreign Lawyer
(Vietnam)
Head of Ho Chi Minh City Office
T +84 2873 0727 88
stefan.ewers@roedl.com

Imprint

Publisher:
Rödl & Partner
20/F, CJ Tower,
2bis-4-6 Le Thanh Ton,
Ben Nghe Ward, Dist. 1,
Ho Chi Minh City, Vietnam
T +84 2873 072 788
www.roedl.de
www.roedl.com

Responsible for the content:
Rödl & Partner (Vietnam)
hochiminhstadt@roedl.com
20/F, CJ Tower,
2bis-4-6 Le Thanh Ton,
Ben Nghe Ward, Dist. 1,
Ho Chi Minh City, Vietnam

Layout/Type:
Rödl & Partner (Vietnam)
hochiminhstadt@roedl.com

This Newsletter offers non-binding information and is intended for general information purposes only. It is not intended as legal, tax or business administration advice and cannot be relied upon as individual advice. When compiling this Newsletter and the information included herein, Rödl & Partner used every endeavor to observe due diligence as best as possible, nevertheless Rödl & Partner cannot be held liable for the correctness, up-to-date content or completeness of the presented information. The information included herein does not relate to any specific case of an individual or a legal entity, therefore, it is advised that professional advice on individual cases is always sought. Rödl & Partner assumes no responsibility for decisions made by the reader based on this Newsletter. Should you have further questions please contact Rödl & Partner contact persons.

The entire content of this Newsletter and the information available in the internet is intellectual property of Rödl & Partner and is protected by copyright. Users may only download, print or copy the content of this Newsletter for their own purposes. Each change, reproduction, distribution or public communication of its content or parts of the content, whether online or offline, require the prior written consent of Rödl & Partner.